IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.12571, 12576, 12698 and 12734 of 2022
and
W.M.P.Nos 12021, 12022, 12023, 12026, 12027, 12028, 12149, 12150, 12151, 12192, 12193 and 12194 of 2022

Tvl.Provimi Animal Nutrition India Private Limited,
Represented by its Deputy Manager
A & R, Mr.R.Munikrishna
Having its office at No.109-A,
Salem Main Road, Near KKP Transport,
Namakkal, Tamil Nadu – 637 001.
India. ... Petitioner

Vs.

The Assistant Commissioner (ST),
Namakkal (Town) Assessment Circle,
Namakkal,
Tamil Nadu – 637 001. ... Respondent

Prayer in W.P.No.12571 of 2022: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records pertaining to the Impugned Order No.TIN/33373121251/2016-17 dated April 18, 2022 on the file of the respondent and quash the same.

Prayer in W.P.No.12576 of 2022: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records pertaining to the Impugned Order No.TIN/33373121251/2017-18 dated April 18, 2022 on the file of the respondent and quash the same.

Prayer in W.P.No.12698 of 2022: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records pertaining to the Impugned Order No.CST/428949/2016-17 dated April 18, 2022 on the file of the respondent and quash the same.

Prayer in W.P.No.12734 of 2022: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records pertaining to the Impugned Order No.CST/428949/2017-18 dated April 18, 2022 on the file of the respondent and quash the same.

For Petitioner (in all W.Ps)	:	Mr.Harish Bindumadhavan
For Respondent (in all W.Ps)	:	Mr.Haja Nazirudeen Additional Advocate General – 1 asst. by Mr.G.Nanmaran Special Government Pleader (T) and Mr.P.Haribabu Government Advocate

COMMON ORDER

The petitioner is before this Court against the impugned orders dated 18.04.2022 passed under Section 84 of the TNVAT Act rejecting the application filed by the petitioner to rectify the Assessment Orders that were earlier passed on 17.12.2019 for the Assessment Years 2016-2017 and 2017-2018.

2. Earlier, the petitioner had challenged the Assessment Orders before this Court in W.P.Nos.1055 and 1062 of 2021. It is noticed that the writ petition was earlier dismissed for default due to non prosecution by an order dated 02.02.2021. Later, the aforesaid order was modified by an order dated 12.03.2021, whereby, the petitioner's request for withdrawing the writ petition was ordered. Accordingly, the Writ Petition was dismissed as withdrawn.

3. Under these circumstances, the petitioner initially opted to file a Revision Petition before the Revisionary Authority under Section 54 of the Act. The Revisionary Authority dismissed the application vide order

dated 24.01.2020 filed under Section 54 of the TNVAT Act, 2006. The order passed by the Revisionary Authority was challenged before the Writ Court.

4. Therefore, the petitioner filed an application under Section 84 of the TNVAT Act, 2006 on 04.02.2021, which have culminated in the impugned order. At stage, when the order was passed by the respondent on 17.12.2019 and the impugned orders on 18.04.2022 rejecting the application filed for rectification of the order dated 17.12.2019, the orders passed for the earlier Assessment years namely 2011-2012 to 2015-2016 were operating against the petitioner.

5. On the very same item, namely calcium, digestive, vitamins and minerals, the petitioner had taken a plea that the product dealt by the petitioner were exempted from payment of tax in terms of Item 5, of Commodity Code 705 of the IV Schedule appended to TNVAT Act, 2006.

6. On the other hand, the department's contention was that the product dealt by the petitioner was a medical products and therefore liable to tax at 5% in terms of Entry 5 of Part B of the I Schedule appended to TNVAT Act, 2006.

7. As far as Assessment Year 2016-2017 and 2017-2018 are concerned, which are the subject matter of the Assessment orders dated 17.12.2019 for the respective Assessment years under the provisions of the TNVAT Act, 2006 and CST Act, 1956, the contention of the Department was that the product manufactured/traded by the petitioner was neither a medicinal product nor an animal supplement and therefore liable to tax at 14.5% in terms of Entry 69 to Part C of the I schedule appended to TNVAT Act, 2006.

8. It is noticed that as on date the contention of the petitioner has been now accepted by the Appellate Deputy Commissioner (ST FAC), Coimbatore for the following Assessment Years vide following orders:-

(i)Order dated 17.03.2023-VAT AP No.43/2019 (2011-2012)

(ii)Order dated 17.03.2023-VAT AP No.44/2019 (2012-2013) (iii)Order dated 17.03.2023-VAT AP No.45/2019 (2013-2014)

(iv)Order dated 17.03.2023-VAT AP No.46/2019 (2014-2015)

(v)Order dated 17.03.2023-VAT AP No.47/2019 (2015-2016)

9. The Appellate Assistant Commissioner has followed the rulings of the Advance Ruling Authority dated 23.07.2012 in the case of Tvl.Pioneer Jellice India Private Limited.

10. It is noticed that even as per the respondent, the correct method for determination of the classification would be either before the Appellate Commissioner or before the Advance Ruling Authority. Prima facie, it appears that the issue stands now covered in favour of the petitioner as the Appellate Commissioner has accepted the contentions of the petitioner that product manufactured and dealt by the petitioner was indeed animal supplement and was exempted in terms of Item No.5, Commodity Code No.705 of IV Schedule appended to TNVAT Act, 2006 in terms of the above mentioned orders of the Appellate Deputy Commissioner.

11. Under these circumstances, the impugned orders are set aside and the cases are remitted back to the respondent to pass a fresh order on merits and in accordance with the aforesaid order of the Deputy Appellate Commissioner (ST FAC). Needless to state, the Department is entitled to take up the issue before the Appellate Forum as has been done against the order of the Appellate Deputy Commissioner dated 17.03.2023.

12. These Writ Petitions stand allowed with the consequential relief. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

20.12.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

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To:

The Assistant Commissioner (ST),
Namakkal (Town) Assessment Circle,
Namakkal,
Tamil Nadu – 637 001.

C.SARAVANAN, J.

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